THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 4689 of 2003

Order:

This writ petition is filed seeking to quash the orders dated 07.08.2002, 29.10.2002 and 31.12.2002, passed by the Revenue Divisional Officer, Vizianagaram District (Respondent No.3), the Joint Collector, Vizianagaram (Respondent No.2) and the District Collector, Vizianagaram (Respondent No.1) respectively, and to direct the respondents to restore the authorization of the petitioner as Fair Price Shop Dealer of Dabbirajupet village, Vepada Mandal, Vizianagaram District.

The petitioner was appointed as Fair Price Shop Dealer for Dabbirajupet village of Vepada Mandal, Vizianagaram District. On 19.06.1999, the Sub-Inspector of Police, Vigilance Cell, Vizianagaram, inspected the Fair Price Shop of the petitioner and found that there is shortage of 108 Kgs. of PDS Rice and
549 Litres of Kerosene and the petitioner for pecuniary gains diverted the same to the black market. Thereupon, he seized 984 Kgs. of Rice and 400 Kgs. of Sugar, all worth Rs.10,244/- under Section 6-A of the Essential Commodities Act, 1955 under a panchanama in the presence of mediators, and a case in C.C. No. 61 of 1999 on the file of the 2nd respondent, namely the Joint Collector, was registered. The Joint Collector, by orders dated 06.03.2000, confiscated the entire seized stocks to the Government. On an appeal filed by the petitioner, the Additional Sessions Judge, Vizianagaram set aside the orders dated 06.03.2000 of the Joint Collector, Vizianagaram and remanded the matter to the Joint Collector, Vizianagaram, for reconsideration, who in turn, after hearing both the sides and after considering the

entire material before him, by order dated 03.04.2001, held that the petitioner has diverted the PDS Rice and Kerosene to the black market for his illegal gains and revised the previous order by imposing a fine of Rs.6000/- towards the difference of PDS Rice and Kerosene.

Thereafter, on 08.11.2001, the Mandal Revenue Officer, Vepada, has submitted a report to the Revenue Divisional Officer, Vizianagaram, stating that the petitioner, who is a very rich landlord, is not dependant on the Fair Price Shop for his livelihood and that he is not maintaining good relations with the Cardholders, and in case the petitioner is reinstated as Fair Price Shop Dealer, he would cause inconvenience to the Cardholders. Based on the said report of the Mandal Revenue Officer, Vepada, and the earlier orders dated 03.04.2001, passed by the Joint Collector, Vizianagaram, the Revenue Divisional Officer, Vizianagaram, issued a show cause notice dated 28.11.2001 to the petitioner framing certain charges, for which, the petitioner has submitted his explanation denying the said charges. However, the Revenue Divisional Officer, by order dated 07.08.2002, has canceled the authorization of the petitioner. Aggrieved by the said order passed by the Revenue Divisional Officer, the petitioner filed an appeal before the Joint Collector, and the Joint Collector, by order dated 29.10.2002 dismissed the same and confirmed the orders passed by the Revenue Divisional Officer. Against that, the petitioner filed a revision petition, under Clause 18(1) of the A.P. Scheduled Commodities (RDCS) Order, 1973, before the District Collector, who by order dated 31.12.2002, dismissed the same and confirmed the orders passed by the original authority. Assailing the said orders passed by the respondent authorities, the petitioner filed the present writ petition.

The main contention advanced by the learned counsel for the

petitioner in this writ petition is that the cancellation of authorization of the petitioner is in violation of the principles of natural justice. He contends that the Revenue Divisional Officer, without considering the explanation submitted by the petitioner to the show cause notice and without recording a specific finding on the charges enumerated in the show cause notice, has cancelled the authorization of the petitioner, which is illegal and arbitrary. He further contends that the appellate and revisional authorities also failed to consider the objections raised by the petitioner in the appeal as well as in the revision petition. The next contention advanced by the learned counsel for the petitioner is that the report of the Mandal Revenue Officer, Vepada, dated 08.11.2002, which formed the basis of the charges, was not supplied to the petitioner. He, thus, prays to allow the writ petition and quash the orders passed by the respondent authorities.

Though the writ petition was admitted in the year 2003, the respondents filed their counter affidavit very recently i.e., only on 01.08.2007 and that too after directing their personal appearance. Learned Government Pleader for Civil Supplies reiterating the counter averments submitted that since the petitioner is not distributing the essential commodities properly and diverting the stocks to the black market, a show cause notice was issued to him on 26.11.2001 and after considering the explanation submitted by the petitioner, the Revenue Divisional Officer, by order dated 07.08.2002, cancelled his authorization, which was confirmed by the appellate and revisional authorities also, and no interference is called for therewith.

Heard the learned counsel for the petitioner and the learned Government Pleader for Civil Supplies and perused the material on record.

There is no doubt that the Joint Collector, Vizianagaram, after

taking into consideration the allegations leveled against the petitioner that he diverted the essential commodities to the black market for pecuniary gains, has imposed fine of Rs.6000/- towards the difference of the PDS Rice and Kerosene, by order dated 03.04.2001, and the said order has attained finality, but the cancellation of the petitioner's authorization is on two other grounds - One is the report submitted by the Mandal Revenue Officer, and the other is that the petitioner has diverted the essential commodities to the black market and not maintaining good relationship with the Cardholders.

In the show cause notice issued to the petitioner, the respondents have also taken another ground stating that the mother of the petitioner was the Sarpanch from 1995 to 2001 and that the petitioner is maintaining a group and distributing the essential commodities only to the said group and not distributing the essential commodities to others. These allegations, if taken into consideration, are very serious and grave in nature. But, the contention of the petitioner is that the original authority i.e., the Revenue Divisional Officer did not consider the explanation submitted by him to the show cause notice. Though the petitioner contends that he has submitted explanation to the show cause notice denying all the allegations made against him, it is unfortunate to note that neither the petitioner produced the copy of the explanation nor the respondents have produced the same before this Court. Since the petitioner contends that the Revenue Divisional Officer, passed the impugned dated 07.08.2002 without considering his explanation, to ascertain the correctness of such contention, it is appropriate to extract the relevant portion of the impugned order, which reads thus:

> "As per the direction of the High Court, Hyderabad and the Joint Collector, Vizianagaram in regard to the 6-A case registered against Sri Eduvaka Sanyasi Rao, dealer

of Fair Price Shop (under suspension) of Dabbirajupeta village, Vepada Mandal, Vizianagaram District, this show cause notice is issued with the following charges for his explanation.

In the year 1994 acting as a dealer of the fair price shop has committed irregularities in distributing the commodities and was suspended, but reinstated treating it as first mistake. Again on 19.06.1999, in the vigilance inspection it was found that there is a shortage of 108 Kgs of PDS rice and 549 ltrs., Kerosene and seized 284 Kgs of Rice and 400 kgs of Sugar and filed a case before the Joint Collector's Court and as such committed irregularities.

2. When your mother was the Sarpanch from 1995 to 2001, you have maintained a group in the village on behalf of her and acted in favour of one group by causing loss to the other group in distributing the commodities and provoked groups, by that you have misappropriated the essential commodities meant for the poor.

3. And you have violated the conditions of the authorization by purchasing the cards and coupons from one group and poor persons and transported the commodities to the black market and made illegal gains.

4. In the case registered against you before the Joint Collector, Vizianagaram under 6-A, the entire stock was confiscated vide letter No.491/99/B6/Dt.06.03.2000. Against the said order you have preferred an appeal before the Addl. Sessions Judge and the matter was remanded back to the Joint Collector. The Joint Collector again enquired the matter and held that all the charges against you are proved and the gravity of offence is very severe and directed to deposit an amount of Rs.6,000/- towards the difference of the PDS Rice and Kerosene as penalty and directed to return the commodities or its value vide above reference No.1 cited.

5. On examination of the explanation for the above charges, it reveals that there is no truth in the explanation. Hence the authorization of Sri Eduvaka Sanyas, dealer, Dabbgirajupeta is hereby cancelled as per Sec.3 (2) (4) and Section 16 (4) of the A.P. Scheduled Commodities Regularisation of Distribution by Card System Order 1973 and Section 3

Clause 4 (12) and 6 Clause (15 of A.P. Scheduled Commodities Dealers (Licencing and Distribution) Orders 1982."

A perusal of the said order clearly indicates that there is no application of mind by the Revenue Divisional Officer, in passing the said order. The Revenue Divisional Officer, who passed the said order, has not considered the explanation submitted by the petitioner. It is stated in para 5 of the said order that "On examination of the explanation for the above charges, it reveals that there is no truth in the explanation". Except the said sentence, there is no other reason given by the Revenue Divisional Officer for canceling the authorization of the petitioner. The appellate authority also simply endorsed the order passed by the Revenue Divisional Officer and he has not even considered any grounds raised by the petitioner in the appeal. Even though the District Collector, who is the revisional authority, has tried to justify the order of cancellation of authorization, but according to the petitioner, the report of the Mandal Revenue Officer, which is the basis for cancellation of his authorization, was also not supplied to him. In support of his contention that cancellation of authorization on the ground of irregularities, without supplying the report of the Mandal Revenue Officer, which formed basis for charges, suffers from patent violation of principles of natural justice, the learned counsel for the petitioner relied on a Division Bench judgment of this Court reported in "**M. Kalyani v. District Collector, Prakasam District, Ongole**[1]. In the said case also the report of the Mandal Revenue Officer, which formed basis for cancellation of the authorization, was not supplied to the petitioners therein, and in such a situation, the Division Bench of this Court, while relying on a decision in

K. Radha Krishna Naidu v. Director of Civil Supplies, Hyderabad

and others[2], set aside the orders passed by the authorities, holding that the principles of natural justice were violated in their passing. In the instant case also, the report of the Mandal Revenue Officer, which is the basis for cancellation of the authorization of the petitioner, was not supplied to him. In fact, this contention of the petitioner is not denied by the respondents in their counter affidavit or at the time of arguments by the learned Government Pleader representing them. On the other hand, the counter affidavit filed by the respondents, is very vague, in that except reiterating the charges framed against the petitioner, no reasons are given in the counter affidavit for passing orders. In addition to that, a perusal of the orders passed by the respondent authorities clearly indicate that there is no application of mind, and they failed to consider the explanation submitted by the petitioner in a correct perspective and failed to assign any reasons for holding that the allegations leveled against the petitioner have been proved. In the circumstances, I am of the considered opinion that the orders passed by the respondent authorities in canceling the authorization of the petitioner, without supplying the report of the Mandal Revenue Officer and without considering the explanation submitted by the petitioner and without assigning any reasons for holding that the allegations leveled against the petitioner have been proved, suffers from patent violation of principles of natural justice, and as such, the same are liable to be quashed.

For the foregoing reasons, the writ petition is allowed and the order dated 07.08.2002 passed by the Revenue Divisional Officer, Vizianagaram, is set aside, and the consequential orders passed by the appellate and revisional authorities dated 29.10.2002 and 31.12.2002 respectively are also quashed with a direction to the Revenue Divisional Officer, Vizianagaram, to supply copy of the report

of the Mandal Revenue Officer to the petitioner, and on receipt of the same, the petitioner may submit his explanation. After considering the explanation to be submitted by the petitioner, the Revenue Divisional Officer shall pass appropriate orders in accordance with law. The entire exercise should be completed within a period of two months time from the date of receipt of a copy of this order.

Normally, when once the order of cancellation of the authorization is set aside, the petitioner is entitled to continue as Fair Price Shop dealer, but in view of the peculiar facts and circumstances of the case – in that the authorization of the petitioner was cancelled as long back as in the year 2002 and by now the respondents might have made permanent arrangements for supplying the essential commodities, and therefore, I am not inclined to disturb such arrangement and direct the respondents to reinstate the petitioner immediately as Fair Price Shop dealer. However, the restoration of the petitioner as Fair Price Shop dealer will be subject to the out come of the orders going to be passed by the Revenue Divisional Officer, Vizianagaram. No costs.

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N.V. RAMANA, J.

Date: 11th October 2007
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[1] 2006 (5) ALD 796 (DB)
[2] 1996 (1) ALD 473